Supreme Court, U. S.
FILED
JUN 10 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1424

DAVID EMERY SERFASS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

APPENDIX

PETITION FOR CERTIORARI FILED MARCH 22, 1974
CERTIORARI GRANTED APRIL 22, 1974

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Lower Court Opinion

APPENDIX B

JUDGMENT of
UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

APPENDIX C

OPINION of
UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

These portions of petitioner appendix are set forth in the petition for a writ of certiorari.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

Vio: 50 App. U.S.C. 462

UNITED STATES OF AMERICA

v.

DAVID EMERY SERFASS

MOTION TO DISMISS THE INDICTMENT

Harry A. Dower of counsel for the Defendant, moves that the Indictment be dismissed on the following grounds, which are supported by the attached Affidavit of the Defendant:

1. That David Emery Serfass is the Defendant in the above-cited case;

2. That the Defendant had been ordered for induction into the Armed Forces of the United States on December 18, 1970, such induction to have taken place on January 18, 1971;

3. That the Defendant applied for Conscientious Objector Status, classification I-O, on December 29, 1970 to Local Board No. 89;

4. That Local Board No. 89 considered the entire file of the Defendant at a meeting on January 13, 1971 and unanimously agreed "that there was no change over which [the Defendant] had no control" and on this basis decided not to re-open Defendant's file;

5. That such notice, received by the Defendant by letter dated January 14, 1971 from Local Board No. 89, concluded that the Defendant was still under Order to report for induction on January 18, 1971;

6. That the recent cases of *United States of America v. Shomock*, 462 F. 2d 338 (June 20, 1972) and *United States of America v. Ziskowski*, 465 F. 2d 480 (August 14, 1972), both decided by the Third Circuit Court of Appeals, indicate that if the Local Board gives no reasons as to why the claimants file will not be re-opened other than the prefuntory "no change over which you had no control," it is inadequate under the holdings of *Scott v. Commanding Officer*, 431 F. 2d 1132 (1970) and *U.S. v. Neamand*, 452 F. 2d 25 (3d Cir. 1971), as it would be impossible to tell "whether the Board's refusal was based on lack of jurisdiction or some other technical reason or was a decision based on the merits of [the]. . . claim." *United States v. Shomack*, supra., at 346.

HARRY A. DOWER,
First Valley Bank Bldg.
Allentown, Pennsylvania 18105
AC 215-821-8700
Of Counsel for the Defendant

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

Vio: 50 App. U.S.C. 462

UNITED STATES OF AMERICA

v

DAVID EMERY SERFASS

SS.:

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LEHIGH

David Emery Serfass, the Defendant herein, being duly sworn according to law, deposes and states that the facts set forth below are true and correct to the best of his knowledge, information and belief.

1. That he is the Defendant in the above cited case;

2. That he applied for Conscientious Objector status, classification I-O, on December 29, 1970 to Local Board No. 89;

3. That, on December 18, 1970, he had been ordered for induction into the Armed Forces of the United States, such induction to have taken place on January 18, 1971;

4. That Local Board No. 89 considered the entire file of the Defendant at a meeting on January 13, 1971 and unanimously agreed "that there was no change over which (the Defendant) had no control" and on this basis decided not to re-open Defendant's file;

5. That such notice, being the only such communication, was received by the Defendant by letter dated January 14, 1971

from Local Board No. 89, concluding that the Defendant was still under Orders to report for induction on January 18, 1971. A true and correct copy of this letter is attached and marked Exhibit "A".

DAVID EMERY SERFASS

Sworn to and Subscribed before me this 29th day of December, 1972.

SARA L. KALB
Notary Public, Allentown, Lehigh County
My Commission Expires February 18, 1974

EXHIBIT A

36-89-46-524

January 14, 1971

Mr. David E. Serfass
22 N. Fairview St.
Allentown, Pa. 18104

Dear Sir:

The Local Board considered your entire file at their meeting on January 13, 1971, and unanimously agreed that there was no change over which you had no control and decided not to re-open your file.

You, therefore, are still under Orders to report for Induction on January 18, 1971 at 5:15 A.M.

FOR THE BOARD:

(Miss) Mamie C. Bramwell
Executive Secretary

MB/lz

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

36-89-46-524

December 18, 1970

Mr. David E. Serfass
22 N. Fairview Ave.
Allentown, Pa. 18104

Dear Sir:

You are hereby ordered for induction into the armed forces of the United States, and to report at the Salvation Army Headquarters, 810 Turner St., Allentown, Penna. on January 18, 1971 at 5:15 A.M. for forwarding to the Armed Forces Induction Station.

PLEASE BRING THIS NOTICE WITH YOU.

FOR THE BOARD:

(Miss) Mamie C. Bramwell
Executive Secretary

MB/la

To:

Local Board 89

I David Serfass would like to file for (SSS Form 150) the special form for conscientious objector.

Thank You.

DAVID SERFASS
36-89-46-524

36-89-46-524

January 14, 1971

Mr. David E. Serfass
22 N. Fairview St.
Allentown, Pa. 18104

Dear Sir:

The Local Board considered your entire file at their meeting on January 13, 1971, and unanimously agreed that there was no change over which you had no control and decided not to re-open your file.

You, therefore, are still under Orders to report for Induction on January 18, 1971 at 5:15 A.M.

FOR THE BOARD:

(Miss) Mamie C. Bramwell
Executive Secretary

MB/la

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

Vio.: 50 App. U.S.C. 462

UNITED STATES OF AMERICA

v.

DAVID EMERY SERFASS

MOTION TO POSTPONE TRIAL

AND NOW, to wit, this 28th day of December, 1972, the Defendant, by Harry A. Dower, Esquire, of counsel for the Defendant, moves the Court to postpone the trial of the within matter which is now scheduled for January 9, 1973, for the reason that a Motion to Dismiss has been simutaneously filed and the expeditious administration of justice will be served best by considering the Motion prior to trial.

HARRY A. DOWER,
First Valley Bank Building
Center Square
Allentown, Pa. 18101
Counsel for the Defendant

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

UNITED STATES OF AMERICA

v.

DAVID EMERY SERFASS

ORDER

Defendant, David Emery Serfass, having filed a motion to continue the jury trial scheduled for Tuesday, Janary 9, 1973, at 10:00 A.M., at the United States Courthouse, Harrisburg, Pennsylvania,

It is ORDERED that the motion is granted and the trial is continued.

MICHAEL H. SHERIDAN
Chief Judge
Middle District of Pennsylvania

Dated: January 5, 1973.

APPENDIX I

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

UNITED STATES OF AMERICA

v.

DAVID EMERY SERFASS

ORDER

NOW, this 5th day of January, 1973, it is ORDERED that Tuesday, February 6, 1973, at 2:30 P.M., at the United States Courthouse, Harrisburg, Pennsylvania, is fixed as the time and place for oral argument on defendant's motion to dismiss.

MICHAEL H. SHERIDAN
Chief Judge
Middle District of Pennsylvania

APPENDIX J

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

UNITED STATES OF AMERICA

v.

DAVID EMERY SERFASS

ORDER

Defendant having filed a motion to dismiss the indictment, and the parties having submitted briefs and made oral argument in support of their respective positions,

It is ORDERED that the parties submit a copy of defendant's Selective Service file within thirty (30) days of the date of this order.

MICHAEL H. SHERIDAN
Chief Judge
Middle District of Pennsylvania

Dated: June 11, 1973.

APPENDIX K

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

June 14, 1973

The Honorable Michael Sheridan
Chief Judge
United States District Court
Middle District of Pennsylvania
United States Court House
Wilkes-Barre, Pennsylvania

Re: United States v. David E. Serfass
Criminal No. 15229

Dear Judge Sheridan:

Enclosed please find the Selective Service file of David E. Serfass as per your order of June 11, 1973.

Sincerely,

BOYD G. HIXSON

BGH:paf
Enclosure

APPENDIX L

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

UNITED STATES OF AMERICA
v.
DAVID EMERY SERFASS

ORDER

In accordance with the memorandum this day filed, it is ORDERED that defendant's motion is granted, and the indictment is dismissed.

MICHAEL H. SHERIDAN
Chief Judge
Middle District of Pennsylvania

Dated: July 16, 1973.

APPENDIX M

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

April 22, 1974

Boyd G. Hixson, Esq.
Law Office of Harry A. Dower
3d Floor, 1st Valley Bank Bldg.
Center Square
Allentown, Pa. 18105

RE: SERFASS v. UNITED STATES
No. 73-1424

Dear Mr. Hixson:

The Court today took the following action in the above case:

"The petition for a writ of certiorari is granted."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By

(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL
Encls.

APPENDIX N

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

UNITED STATES OF AMERICA
v.
DAVID EMERY SERFASS

FILINGS–PROCEEDINGS

1972	
Oct. 11	Indictment– 1 Count of a true bill
Oct. 12	Order for Warrant– for arrest of deft. pursuant to Bail Reform Act of 1966. WJN
	Warrant issued & handed to United States Marshal w/cc of indictment
Oct. 20	United States Marshal's return– on warrant for arrest of deft. executed as directed.
Nov. 29	Notice of Arraignment– set for 12-22-72 at 11:30 AM Wilkes-Barre
	Copies mailed to United States Attorney and deft., United States Marshal, Probation Office and FBI
Dec. 4	Receipt– for notice.
Dec. 22	Plea of Defendant – not guilty
Dec. 22	Minute sheet of the– clerk, trial date set for Tuesday, Jan. 9, 1973 at 10:00 AM at Harrisburg, Pa. jury trial demanded.
1973	
Jan. 9	Memorandum of clerk– trial scheduled for 1/9/73 continued by court. No new date set. Yellow sheet of paper.
12/30/72	Motion to Dismiss– Indictment.
12/30/72	Affidavit of– deft. together with Exhibit "A".
12/30/72	Motion to Postpone– Trial.

Jan. 5 Order granting motion to postpone trial. Trail is continued cc: to all concerned. MHS

Jan. 5 Order – fixing 2/6/73 at 2:30 PM at Harrisburg as time and place for oral argument on Motion to Dismiss. cc: to all concerned. MHS

Feb. 6 Clerk's minutes sheet – on hearing on deft's motion to dismiss. Taken under advisement. MHS

Feb. 6 Government's brief – opposing the deft's motion to dismiss the indictment.

June 11 Order of court – directing that parties submit a copy of the Defendants Selective Service file to the Court within 30 days of the date of this order. (MHS) cc: to all concerned.

July 13 Memorandum – of Defendant in support of his motion to dismiss.

July 15 Exhibit No. 1 –

July 15 Exhibit No. 2 –

July 16 Memorandum – of Judge Sheridan re defendant's motion to dismiss indictment. (S) cc: to all concerned.

July 16 Order – that Defendant's motion is granted, and the indictment is dismissed. (S) cc: to all concerned.

July 16 JS 3 of 3

Copies of above Memorandum and Order mailed to S. John Cottone, Harry A. Dower, Esq. and Thomas Foley, Jr., Esq., Michael Eagan, Esq. and Boyd Hixson Esq.

Aug. 15 Notice of Appeal – of the order of Court dated July 16, 1973 by the United States Attorney.

Aug. 17 Clerks letter – of transmittal to the Clerk, United States Court of Appeals along with the original documents.

Aug. 21 Receipt – for record on appeal.

Aug. 23 Order United States Court – of Appeals setting briefing schedule etc.

1974

March 4 Opinion – of Court of Appeals reversing the District Court order granting dismissal of indictment. Case will be remanded to District Court for trial or other proceedings consistent with this opinion.

March 15 Judgment – of Court of Appeals reversing order of District Court dated 7/16/73 and the cause is hereby remanded to the District Court for trial or other proceedings in accordance with the opinion of this Court. cc: to Judge Sheridan.

APPENDIX O

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 73-1736

UNITED STATES OF AMERICA, APPELLANT

v.

DAVID EMERY SERFASS

No. 15229 Cr.

JAMES W. WALKER, ESQUIRE
for appellant
HARRY A. DOWER, ESQUIRE
BOYD G. HIXSON, ESQUIRE
Dower, Mackson, Hauff & Hettinger
for appellee

FILINGS–PROCEEDINGS

1973

Aug. 23 Certified copy of Notice of Appeal, recd' August 17, 1973, filed.

Record, rec'd. August 17, 1973, filed.

Order (Clerk) directing that if the transcript is desired and has not been filed, it shall be ordered forthwith, with the proper arrangements for payment to be made; directing the court reporter to file the transcript on or before Sept. 24, 1973; directing appellant's brief and the appendix be filed and served within 30 days of the filing of the transcript in the DC, or within 30 days of the date of this

order, whichever is later; directing appellee's brief be filed and served 21 days after appellant's brief and the appendix are filed and served and directing the Clerk of the DC to deliver a copy of this order to the court reporter, filed.

Certified copy of above order to C of DC and Ct. Rep.

Aug. 28 Appearance of Harry A. Dower and Boyd G. Hixson, Esqs.; Dower, Mackson, Hauff & Hettinger for appellee, filed.

Sept. 2 Appearance of James W. Walker, Esq. for appellant, filed.

Sept. 20 Consent motion by appellant for leave to extend time for filing brief and appendix to and including October 24, 1973, filed. (4 cc.).

Sept. 21 Above consent motion denied. Counsel's attention is directed to the provisions concerning delay in the order of August 23, 1973. *Clerk.*

Sept. 24 Letter rec'd September 24, 1973 from counsel for appellant, considered as appellant's motion for leave to extend time to file brief and appendix and for leave to file in typewritten form, filed. (1 cc.). Proof of service in letter dated October 3, 1973.

Sept. 28 Submitted on above letter-motion. Clerk.

Oct. 1 Order *(Clerk)* granting appellant's letter-motion for leave to extend time to file brief and appendix and for leave to file in typewritten form; and brief for appellant and the appendix are to be filed and served not later than October 4, 1973, filed.

Oct. 9 Brief for appellant, filed. (7 cc.).

Oct. 9 Appendix, filed. (7 cc.).

Oct. 29 Brief for appellee, filed. (11 cc. – 14 add'l rec'd November 1, 1973).

Oct. 29 Motion by appellee to quash appeal for lack of jurisdiction, filed. (12 cc.). Proof of mailing in

letter dated October 26, 1973.

Nov. 16 Submitted on above motion. Coram: Van Dusen, Aldisert and Rosenn.

Dec. 4 Order *(Van Dusen,* J.) directing case be listed for disposition without oral argument and submitted pursuant to Rule 12(6), filed.

Dec. 19 Submitted on briefs. Coram: Van Dusen, Aldisert and Rosenn.

1974

Feb. 20 Opinion of the Court (Van Dusen, Aldisert and *Rosenn,* C.J.), filed.

Feb. 20 Judgment (Van Dusen, Aldisert and Rosenn, C.J.) reversing the order of the District Court, filed July 16, 1973; and remanding the cause to the District Court for trial or other further proceedings in accordance with the opinion of this Court, filed.

Mar. 14 Certified judgment in lieu of formal mandate issued.

Mar. 14 Record returned to C. of D. C.

Mar. 27 Notice of filing (on March 22, 1974) of petition for writ of certiorari, rec'd from Clerk of S.C., filed. (S.C. No. 73-1424)

Apr. 29 Certified copy of order (dated April 22, 1974) granting petition for writ of certiorari, rec'd from Clerk of S.C., filed. (S.C. No. 73-1424)

APPENDIX P

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF CALIFORNIA

No. 7145IH

UNITED STATES OF AMERICA

v.

RUTH LINETSKY
LIONEL PERRY
LINETSKY PRODUCTS INC.
PHOTO NEWS MONTHLY, INC.

PROCEEDINGS

12/22/70 Ent ord for flg Indict & for issu of B/W's as to defts Linetsky & Perry & for fxg bail at $1,000.00 C/S as to defts Linetsky & Perry & summons to be issd by U.S. atty. as to defts Linetsky Products, Ind. & Photo News Monthly Inc. Fld Indict. Issd B/W's. Md JS-2. (DWW)

12/23/70 Fld Ord (DWW) that bail originally set at $1,000.00 C/S as to each deft be reduced to $1,000.00 P/R as to each deft.

12/28/70 Fld B/W's retnd Exec as to defts Linetsky & Perry. (2 sep docs)

1/13/71 Fld summs retnd svd as to Photo News Monthly, Inc. Fld summs retnd svd as to Linetsky Products, Inc.

1/18/71 Trial Setting: Court ords case set for 7 day jury trial 4/27/71, 10 a.m. All mots to be fld by 3/8/71. Govt reply due 3/15/71. All mots to be nted for hrg 3/22/71, 1:30 p.m. Defts waive right to speedy trial. Mtter set on cal of 2/22/71, 3 p.m. for prelim P/T. (IH)

1/18/71 Fld design of cnsl, Edwin Rosendahl for all defts.
All defts, Linesky, Perry, Linetsky Products, Inc & Photo News Monthly, Inc. are arr & T/N as chgd. All four (4) defts plead Not Guilty to Indict.

Deft Linetsky, counts 1 thru 36; Perry counts 1 thru 36, Linetsky Products, cts 1 thru 13, 16, 17, 19, 20, 21 25, 28, 30 thru 36; Deft Photo News counts 14, 15, 18, 22 thru 24, 26, 27, 29 & 33. Court ords case assigned to the cal of Judge Irving Hill for all fur procs & cont to 2 p.m. this date for trial setting. Fld defts Perry & Linetsky stmt of defts' constitutional rights. (DWW).

2/2/71 Fld Deft's Stipulation w/ exhibits.

2/2/71 Fld $1,000.00 P/R bond posted 12/23/70 bef US Magistrate Marvin G. Weeks at Los Angeles, California. Fld Notc of fld Bond as to deft Lionel Perry.

Fld $1,000.00 P/R bond posted 12/23/70 bef US Magistrate Marvin G. Weeks at Los Angeles, California. Fld Notc of Flg Bond as to deft Ruth Linetsky.

2/22/71 Re all defts: Prelim pre-trial held: Cnsl for defts, Edwin M. Rosendahl, advises he may file mtn to dismiss as to all defts. Ct & cnsl confer. Ord trial date of 4/27/71 stand (IH)

3/2/71 Fld Deft's Mot for a Bill of Particulars & Mot for Discovery & Production of Documents retnbl 3/22/71 bef (IH).

Fld Deft's Mot to Inspect Minutes of Grand Jury Proceedings retnbl 3/22/71.

Fld Deft's Affidavit of Edwin M. Rosendahl in Support of Defts' Mot to Inspect Grand Jury Minutes & Memo of Pts & Authorities in Support of said Mot.

Fld Defts' Mot to Dismiss the Indict retnbl 3/22/71 bef (IH).

Fld Brief in Support of Mot to Dismiss the Indict.

Fld Deft's Appendix to Brief in Support of Mot to Dismiss the Indict.

3/4/71 Fld Not of Mots (fld 3/2/71) retnbl 3/22/71, 1:30 p.m. bef (IH)

3/15/71 Fld pltf's combined response to defts' mots for: inspection of G/J mins of procs, for bill of particulars, discovery & production & for dismissal of the indictment.

3/22/71 Ent prcdgs: Fld deft's req for vacation of trial date & waiver of right to speedy trial. Ord trial set on cal of 4/27/71, vacated Deft's mot to inspect F.J. minutes denied. Govt cnsl agrees to furnish Jencks Act stmts 48 hrs prior to testimony. Deft's mot to dismiss deferred until ruling by Supreme Court in related cases. Govt cnsl to furnish deft's cnsl within 10 days copy of the material that is subject of each CT. of the Ind. All other aspects of deft's mots not specifically ruled upon are either w/drawn or satisfied. Govt cnsl to advise Court & cnsl re: meaning of terms "obscene, lewd, etc. within 2 weeks, etc. Govt cnsl Ord to advise deft's cnsl whether if any recipients of material that is subject of Indict were minors. Atty Fox to prepare formal order for the Court's sig and submit same approved as to form by deft's cnsl. Cnsl. to advise Court when ruling in related cases is made. (IH)

3/30/71 Fld Govt's Suppl Response to Defts' Bill of Partics.

5/13/71 Ord deft's pending mot to dismiss calendared for hrg 6/10/71, 9:30 a.m. Cnsl for the moving parties will be allowed one hour to argue. Said hour to be allotted amongst the three cnsl in this case and the two related cases as agreed. Govt cnsl to be allowed same time under same conds. Trial to be re-set after hrg on mot. (IH) Cnsl ntfd by Phone and cyps. mld to cnsl. (IH)

6/10/71 Ent prcdgs: Ord deft's mot to dismiss denied as to all aspects except the constitutionally protected

expression aspect which shall be set for hrg 7/30/71, 10:00 a.m. Deft have to and incl. 6/30/71 to file any memos, etc., pltf's reply thereto due 7/20/71. Fld exbt. Ord exbt sealed. (IH)

6/11/71 Fld Substitution of Atty (IH) substituting Robert N. Harris in place and stead of Edwin M. Rosendahl as to deft Lionel Perry.

6/17/71 Fld Pltf's Mot & Not of Mot retnbl 7/12/71, 1:30 p.m. bef (IH) for Modification of Order of 6/10/71 re: Defts' Mots to Dismiss.

6/17/71 Fld Application for Order Shortening Time to File Mot of Pltf. Application Denied by (IH)

6/18/71 Fld Defts' Memo of Pts & Atuhrs.

7/9/71 Fld Adoption of defts' pts & auths by deft Lionel Perry & joins in and adopts "Defts' Memo of pts & auths" fld by Edwin M. Rosendahl on behalf of other defts.

7/12/71

Hrg Mot: Pltf's mot for ord modifying Court's previous ord denied. Govt cnsl to submit formal order for the Court's Signature. (IH)

7/20/71 Fld Govt's Memo of pts & auths:

(1) renewing its objection to the proposed hearing set for July 30, 1971, on additional grounds; and (2) Govt's response, in opposition, to defts' pts & auths in suppt of comparative samplars to be tendered by defts, with exbts 1, 2, 3, 4, 5.

7/16/71 Fld Ord (IH) Denying Pltf's Modify Ord.

7/26/71 Fld Deft's Reply Memo of pts & auths.

7/30/71 Upon Crt's own mtn, ORD fur hrg on deft's mtn to dismiss deferred until 8/5/71, 10 a.m. Cnsl notified by phone. (IH)

8/5/71 Hrg Mot: Ent procs: Marked exhbts. Ord deft's Mot to dismiss granted as to each and every defendant and each and every count of the Indict.

Ruth Linetsky – Counts 1 thru 36;

Lionel Perry – Counts 1 thru 36;

Linetsky Products, Inc. – Counts 1 thru 13, 16, 17, 19, 20, 21, 25, 28, 30, 31, 32, 34, 35 & 36;

Photo News Monthly, Inc. – Counts 14, 15, 18, 22, 23, 24, 26, 27, 29 & 33.

(All counts above shown as charged in the Indictment as being dismissed by Judge Irving Hill on this date.)

Cnsl for defts to prepare joint formal order with this case and case 7142-IH and submit same by 8/12/71. Any objections to be filed by 8/17/71. Transcript of procs will constitute Court's findings and conclusions unless cnls file separate findings and conclusions. (IH). Bond of each individual deft and corporations are exonerated. Md. JS-3 as to each individual deft & each corporate deft. (IH).

7/21/71 Fld notc re: dcmt withheld from case file

Fld notc re: dcmt withheld from case file

8/13/71 Fld Ord (IH) dismissing Indictments in both cases 7145 & 7142-IH as to all defendants so stated in said order and any bonds in said cases exonerated. Md. JS-3 as to all defts in said case. (IH).

(Original order in Case 7142-Cr).

Fld reporter's trans of prcdgs (partial) held 8/5/71.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF CALIFORNIA

No. 7142IH

UNITED STATES OF AMERICA

v.

JAMES JOSEPH CARLO

PROCEEDINGS

12/22/70 Ent ord for flg Indict & for Issu of B/W & fxg bail at $1,000.00 C/S.

Fld Indict. Issd B/W. Md JS-2. (DWW)

Fld Ord (DWW) that bond originally set at $1,000.00 be reduced to $1,000.00 P/R.

12/28/70 Fld B/W retnd Exec as to deft Carlo.

1/18/71 Atty Joseph Taback is retnd for the deft. Fld design of cnsl. Deft Arr & T/N as chgd. Deft pleads Not Guilty to indict cts 1-11 Case asgd to cal of Judge Hill for all fur prcdgs, & cont to 2 p.m. this date for trial setting. Fld stmt of deft's constitutional rights. (DWW)

1/18/71 Trial Setting: Court ords case set for 4 day jury trial 4/13/71, 10 a.m. All mots to be fld by 3/8/71. Govt reply due 3/15/71, All mots to be ntcd for hrg 3/22/71, 1:30 p.m. Matter set on cal of 2/22/71, 3 p.m. for prelim P/T. Deft waives right to speedy trial. (IH)

2/22/71 Prelim pre-trial held: Cnsl for deft advises he may file mtn to dism. Ct & cnsl confer, Ord trial date of 4/13/71 stand. (IH)

3/8/71 Fld: deft's Mot for discvy, inspection & productn; Mot to hv govt list names of wits; Mot to produce evid inconsistent with guilt; Mot to produce all informers & wits; Mot for bill of parties; Mot to dism; affid of Joseph Taback in suppt of above

mots & Fld deft's Notc of all of above mots, retnble 3/22/71, 1:30 p.m. bef (IH).

3/16/71 Fld Govt's Combined Response and Opposition to Deft's Mots for Discovery Bill of articulars, To Dismiss the Indict; For Production of Informers & witnesses; For Disclosure of Witnesses Names and for Production of Exculpatory Evidence; Memo of pts & Authors.

3/22/71 Ent prcdgs: Fld affdvt of deft ref trial date & right to speedy trial. Ord trial date of 4/13/71 vacated. Deft's, mot to inspect G/J. minutes denied Govt cnsl agrees to furnish Jencks Act stmts 48 hrs prior to testimony. Deft's mot to dismiss deferred until ruling by Supreme Court in related cases. Govt cnsl to furnish deft's cnsl within 10 days copies of the material that is the basis of each count of the Indict. Govt cnsl to advise Court and deft's cnsl re: meaning of terms "obscene, lewd", etc. within 2 weeks etc. Ord govt cnsl advise defts' cnsl whether if any recipients of material subject of Indictment were minors. Deft's mot for bill of particulars is denied as to items 8, 9, 14 thru 25 and 29. All other aspects of deft's mots not specifically rules upon are either w/drawn or satisfied. Atty Fox to prepare formal order for the Court's sign and submit same approved as to form by deft's cnsl. Cnsl to advise Court when ruling in related cases is made. (IH)

4/21/71 Fld $1,000.00 P/R bond posted 12/23/70 bef U.S. Commr Weeks at L.A., Calif.

Fld notc of flg bond.

5/13/71 Ord deft's pending mot to dismiss calendared for hrg 6/10/71, 9:30 a.m. Cnsl for the moving parties will be allowed one hour to argue. Said hour to be allotted amongst the three cnsl in this case and the

two related cases as agreed. Govt cnsl to be allowed same time under same conds. Trial to be re-set after hrg on mot. (IH) Cnsl ntfd by phone and cyps mld to consl. (IH)

6/8/71 Fld Govt's Supplemental Response to Deft's Bill of Particulars.

6/10/71 Ent prcdgs: Ord deft's mot to dismiss denied. Fur Ord Deft's mot to dismiss regarding constitutionally protected expression set on cal of 7/30/71 for oral argument at 10:00 a.m. Deft shall have to and incl 6/30/71 to file any memos, etc., pltf's reply thereto due 7/20/71. Cnsl to file stip re: exbts to Indict by 6/15/71. (IH)

6/17/71 Fld Stip between Deft's cnsl & Pltf re: Exhibits.

7/1/71 Fld deft's pts & auths.

7/20/71 Fld Govt's Memo of Pts & Authorities: (1) Renewing Its Objection to the Proposed Hearing set for 7/30/71, On Additional Grounds; and, (2) Govt's Response, In Opposition, to Defts' Pts & Authors in Support of Comparative Samplars to be Tendered by Deft.

7/30/71 Upon Crt's own mtn, Ord fur hrg on deft's mtn to dismiss deferred until 8/5/71, 10 a.m. Cnsl ntfd by phone. (IH)

8/5/71 Hearing Motion: Ent procs: Marked exhbts. Ord deft's Mot to dismiss granted.

Cnsl for deft to prepare joint formal order with this case and case 7145-IH and submit same by 8/12/71. Any objections to be filed by 8/17/71. Transcript of procs will constitute Court's findings and conclusions unless cnsl file separate findings and conclusions. (IH).

Bond exonerated. Ent. 8/6/71. Md. JS-3 (IH).

8/13/71 Fld Ord (IH) (Original order in Case 7142-IH), dismissing Indictments in both cases 7145 & 7142-IH as

to all defts so stated in said order and any bonds in said cases exonerated. Md. JS-3 as to all defts in said cases. (IH).

Fld reporter's trans of prcdgs (partial) held 8/5/71.

12/8/71 Upon appl of Atty Bennett B. Cohon, Ord that those dcmts attached to a stip of cnsl, fld 6/17/71, previously ord sealed by the Court, shall be unsealed & cys thereof made, and the Orig dcmts then shall be resealed. (IH)

1/17/72 Upon oral mtn of Atty George Lydon, ord exbt #E attached to a stip of cnsl fld 6/17/71 previously ord sealed by the Court, be unsealed and copy thereof made, and original then shall be resealed. (IH)